

From: Allen, Mandy [<mailto:mandy@mbari.org>]
Sent: Friday, April 14, 2006 9:33 AM
To: MLPAComments@resources.ca.gov
Subject: MLPAComments: Comments on MLPA Documents

Hello,

Thank you for providing the opportunity to submit comments regarding the documents still under review by the MLPA Blue Ribbon Task Force.

Attached please find a letter from MBARI President Marcia McNutt with comments on data ownership and a clarification request regarding scientific permitting in MPAs. Please feel free to contact me with any questions.

Sincerely,

Mandy Allen

Mandy Allen
Operations Administrator
Monterey Bay Aquarium Research Institute
7700 Sandholdt Road, Moss Landing, CA 95039
ph: (831) 775-1885 fax: (831) 775-1645
<http://www.mbari.org> <<http://www.mbari.org/>>



April 13, 2006

Phil Isenberg, Chair
c/o California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

RE: MLPA Blue Ribbon Task Force Recommendations for CA Marine Protected Areas

Dear Mr. Isenberg:

The purpose of this letter is to solicit some clarification on the impact of establishing a network of Marine Protected Areas (MPAs) on the process for obtaining research permits and to offer some alternative thoughts on the recommendations concerning data ownership. As one of the prominent marine science research facilities in the Monterey Bay area, the Monterey Bay Aquarium Research Institute (MBARI) appreciates the value of MPAs within state boundaries along the central coast. The Blue Ribbon Task Force (BRTF) has been charged with an immense task, and we are pleased to see that recommendations will be forwarded to the California Department of Fish and Game.

To provide you with some background, MBARI is located in Moss Landing, California at the apex of Monterey Bay, and the vast majority of our research occurs in the Monterey Bay National Marine Sanctuary (MBNMS). MBARI scientists are dedicated to improving scientific understanding of marine biology, chemistry, and geology. Our research programs include benthic ecology, biogeochemistry, canyon processes, development of chemical and biological sensors, midwater biology, microbial oceanography, and molecular ecology. This research is invaluable to the oceanographic community and can provide critical information to agencies managing MPAs. In addition to our existing database of extensive ROV video footage over large portions of Monterey Bay, data from many of our studies help to better understand ocean processes. As you know, it is essential to identify and understand these "baseline" processes before managers can evaluate if MPAs are effective in achieving their objectives.

MBARI has established an excellent working relationship with the staff at the MBNMS. We operate under permits issued by the Sanctuary and provide the Sanctuary with annual reports of our activities as related to these permits. Several of our scientists also maintain scientific collecting permits with the California Department of Fish & Game (CDFG) for occasional collection of living specimens as part of their research. MBARI takes these permitting obligations seriously and devotes considerable resources to complying with the letter and intent of the regulations. In turn, the MBNMS has worked to streamline the permitting process to make compliance less onerous.

MBARI's concern is that additional permits or authorizations will be required to conduct research in the proposed MPAs. This subject is discussed generally in the document, "Final Draft Adaptive Management and Monitoring and Evaluation Framework" dated March 7, 2006. However, it still remains unclear what will be expected of researchers. We have communicated with individuals who are involved in the process to identify MPAs on the central coast, and we have heard conflicting opinions on the potential permitting requirements. Therefore, can you please address specifically whether additional permits, beyond what is already required from Sanctuaries and CDFG, will be required within MPAs and through which agencies? Can you also comment on additional conditions that may be placed on existing or new permits?

Data ownership has been discussed by the BRTF, although this issue does not appear to have been resolved. I would strongly recommend that all data obtained in these areas **NOT** become the property of the State. This would be setting a dangerous precedent and most likely discourage external research in these areas. It is becoming commonplace in scientific circles that investigators be required to make their data publicly available and archive it in existing data bases, after a short period of data validation and quality control. Making this requirement explicit for all scientific projects in MPAs would be reasonable and, frankly, welcomed. I seriously doubt, however, that the State is ready to take on the responsibilities of data ownership. Is the State truly prepared to archive the data or even to take on the responsibility for sending quality controlled data with the appropriate metadata to the appropriate archives? How does the State propose to arbitrate the data ownership issues in the very large number of cases when federal employees collect the data and are obligated to place it in the public domain? Does the State want to deal with all of the issues that arise with use of data that the State has insisted that it owns, but has had no oversight in its collection and quality control? Perhaps I simply fail to see what the State would gain through ownership, and only see the pitfalls. The federal government has not insisted on similar restrictions on data ownership, and in my opinion, for very good reasons.

Specifically, we suggest that California adopt a data sharing policy similar to the one instituted by the National Science Foundation (NSF). This policy is discussed in Chapter 7, article 734 of the NSF Grant Policy Manual (see <http://www.nsf.gov/pubs/2002/nsf02151/gpm7.jsp#733.1>) and article 37 of the NSF General Grants Conditions document (see <http://www.nsf.gov/pubs/2002/gc102/gc102.pdf>). These documents state that, "NSF expects significant findings from research and education activities it supports to be promptly submitted for publication, with authorship that accurately reflects the contributions of those involved. It expects investigators to share with other researchers, at no more than incremental cost and within a reasonable time, the data, samples, physical collections and other supporting materials created or gathered in the course of the work." However, "NSF normally allows grantees to retain principal legal rights to intellectual property..."

Scientists, both within and outside MBARI, are becoming increasingly concerned with permitting requirements to conduct research in the Monterey Bay area. A significant portion of our ocean observing activities, which greatly benefit the monitoring of marine reserves, is supported by the NSF. To obtain that funding, we must compete nationally with other organizations, the vast majority of which operate in ocean regions not subject to the same restrictions for scientific permitting. If we are not able to obtain permitting affordably and efficiently, the science will go elsewhere, negatively impacting our ability to understand and monitor Monterey Bay. Therefore, if the permitting burden on researchers proves to be too great, we cannot support the current plans.

Thank you for the opportunity to provide these comments. MBARI would be happy to discuss this further with appropriate individuals as directed.

Sincerely yours,

Marcia McNutt
By Cathryn, CEO

Marcia McNutt
President and CEO